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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. Jiri Dienstbier, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia

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Introduction

1. This is the second comprehensive report on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Jiri Dienstbier. His first report was submitted to the General Assembly (A/53/322) on 11 September 1998 and was updated with an addendum on 30 October 1998 (A/53/322/Add.1). Because United Nations practice requires early submission of reports for editing and translation purposes, information contained in this report will be superseded by more recent events before its presentation to the Commission on Human Rights in spring 1999. The early due date of this report means that it will generally cover only events of November and early December 1998. The Special Rapporteur will further endeavour to discuss some general trends which he has observed since his initial appointment in March 1998. The Special Rapporteur would like to stress, however, that the practice of requiring the submission of reports more than three months before they are to be discussed in the Commission or the General Assembly is unacceptable and offers suitable arguments to those who would criticize the United Nations for ineffectiveness and excessive bureaucracy.

2. The Special Rapporteur would like to express his gratitude to the Office of the High Commissioner for Human Rights (OHCHR) for the support it has provided to his mandate, and especially to the field officers, who work under often difficult circumstances. All of the Special Rapporteur's missions are organized by OHCHR field offices, which also gather information and provide analysis of human rights developments. The Special Rapporteur has been gratified by the generous financial support provided by Governments to the field presences of OHCHR, and he is hopeful that this trend will continue in 1999.

I. BOSNIA AND HERZEGOVINA

A. General observations

3. Three years after the signing of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (Dayton Agreement) (S/1995/999, annex), the country continues to be divided along ethnic lines. While the Dayton Agreement stopped the fighting and the most egregious violations of human rights and international humanitarian law, underlying issues were to a large extent left to the parties to resolve among themselves on the basis of the Dayton principles. Human rights violations taking place today are directly linked to the parties' failure rigorously to implement the structures and mechanisms agreed to at Dayton. The implementation of Annex 7 (Refugees and Displaced Persons) to the Agreement has been especially poor, with an unacceptably low number of minority returns throughout the country, despite the enormous efforts and pressure brought to bear by the international community. Through the end of 1998 only some 50,000 minority returns had taken place, of which only some 2,000 were to the Entity of the Republika Srpska (RS). There is a huge gap between the verbal commitments of political leaders to respect the right to return and the reality on the ground. Authorities at all levels and in all parts of the country consistently obstruct return programmes in ever-more imaginative ways.

4. In theory the Dayton Agreement guarantees the highest level of human rights standards to the citizens of Bosnia and Herzegovina. In practice, any objective assessment would have to conclude that rights violations continue on a large scale. State actors persistently fail to respect, protect or fulfil their obligations towards citizens. The international community, present in Bosnia and Herzegovina on an unprecedented scale, is pressing ahead with efforts at reform of police and the judiciary to improve the protection of human rights and to make the process self-sustainable. While the Special Rapporteur fully supports these programmes, he would like to see more attention given to the genuine building of civic society. Rushed programmes and the tendency toward imposing solutions from outside will not bring lasting results. It must be recognized that an international presence will have to remain in Bosnia and Herzegovina for a long time to allow for the reconciliation and democratization processes to take root.

5. The Special Rapporteur visited Bosnia and Herzegovina from 4-9 July 1998 and again on 5-8 December 1998. During the latter visit he participated in a Human Rights Conference organized by the Human Rights Centre of the University of Sarajevo and the Council of Europe in commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights. At that time he also met with representatives of local non-governmental organizations (NGOs), international organizations such as the United Nations High Commissioner for Refugees (UNHCR), and the High Representative in Bosnia and Herzegovina, Mr. Carlos Westendorp.

6. The Special Rapporteur welcomed new institutional arrangements undertaken in Bosnia and Herzegovina, by which the OHCHR field presence would be formally located within the Office of the Special Representative of the Secretary-General in Bosnia and Herzegovina, while maintaining close cooperation with the Office of the High Representative. This arrangement will benefit the Special Rapporteur by providing him better access to information on human rights gathered and verified by these organizations. The Special Rapporteur, while recognizing the importance of receiving all relevant information on the human rights situation from the field, would like to emphasize again the independent character of his mandate, by which any observations, conclusions and recommendations he makes are his alone.

B. Return of refugees and displaced persons

7. The Dayton Agreement guaranteed the right of all refugees and displaced persons freely to return to their homes of origin and to have restored to them, or to receive compensation for, property of which they were deprived in the course of hostilities since 1991. The parties promised to ensure that returns can occur with full security, without fear of harassment, intimidation, persecution or discrimination. The right to choose one's destination freely and the right to information were also guaranteed. These rights are without doubt among the most frequently violated rights in Bosnia and Herzegovina.

8. Three years after, Dayton conditions are still deeply unsatisfactory for returns, especially for the return of minorities. While freedom of movement improved in 1998 following the introduction of common automobile licence plates, other conditions necessary for returns have not materialized. The

main obstacles to returns remain inadequate security and lack of protection of social and economic rights, particularly those related to property and housing.

9. As reported previously by the Special Rapporteur, violence targeting returnees and potential returnees was widespread in 1998. Incidents were reported from all areas of the country, but the Special Rapporteur must stress his concern over Bosnian Croat-controlled areas, including Stolac, where serious threats to the security of the returnees as well as to international organizations working for returns persisted throughout the year, up to the writing of this report. Large-scale destruction of returnees' property and violent incidents targeting returnees were almost daily occurrences. The situation has remained tense and the safety of returnees has required the presence of tanks of the international Stabilization Force (SFOR) at the site.

10. It is typical of Bosnia and Herzegovina that the local context in which returns happen varies a great deal. If one looks only at the statistics of human rights violations it is possible to be easily misled. For example, in eastern parts of Republika Srpska, the number of security-related incidents against returnees appears to be low. However, this is due to the fact that return movements to these areas, "ethnically cleansed" of Bosnian Muslims during the early stages of the war, have not really even started.

11. Also, methods of obstructing returns vary. While violence against returnees and lack of police action to protect returnees' rights are easily detected, more sophisticated methods of obstructing returns, such as different administrative and legal obstacles and corrupt practices of local authorities, are more difficult to discern. Yet this kind of obstruction is practised rampantly in all areas of Bosnia and Herzegovina.

12. The Special Rapporteur attended the Humanitarian Issues Working Group meeting in Geneva on 20 November, in which UNHCR's paper on Progress in and Prospects for Sustainable Return and Solutions in the Former Yugoslavia (HIWG/98/9 of 16 November 1998) was discussed. The Special Rapporteur would like to express his support for the extremely difficult task that UNHCR is trying to accomplish in the region of the former Yugoslavia to facilitate return movements. He agrees with UNHCR that the central lesson learnt from 1998 is that reaching the goals of the international community, and thereby meeting the aspirations of the great majority of the peoples of the region, will be a time-consuming process - much longer and more demanding than many had expected at the conclusion of the Dayton Agreement.

13. The Special Rapporteur unequivocally supports the right to return to one's home of origin as a fundamental human right. At the same time, it must be recognized that large and ever-increasing numbers of refugees and displaced persons are deciding not to return home. The Special Rapporteur agrees with UNHCR that those persons who have decided not to return need help to rebuild their lives and should not be left in limbo. It is of paramount importance that the choice of residence can be exercised freely and voluntarily without any manipulation or pressures. Such free choice cannot be exercised unless obstacles to return are removed or at least significantly reduced.

14. In Bosnia and Herzegovina, the security environment in the long run requires the development of professional and depoliticized police forces and judiciaries. In the short term, the presence of international military forces and their active support for the implementation of civilian aspects of the Dayton Agreement will remain imperative. Access to adequate housing is another key element. Thus, rigorous implementation of the property and housing legislation now in place in both Entities is fundamentally important. So far, monitoring of the implementation of the property and housing laws of the Federation of Bosnia and Herzegovina has revealed serious problems and only very few returnees have actually managed to repossess their pre-war housing. In the Republika Srpska, property and housing laws were only passed in early December 1998, but it is very likely that it will prove difficult to enforce them.

15. A number of other issues have to be addressed in addition to those mentioned above. The authorities have to start providing full and unhindered access to all public documents necessary for returnees to realize their rights. Discriminatory treatment in the areas of employment, education, health and social welfare must be eliminated and access to all public services, such as water, gas and electricity ensured. The Special Rapporteur fully supports the increased attention paid by the international community to ensuring these rights to all without discrimination. It is of utmost importance that refugees and displaced persons be provided with information on their rights and effective mechanisms to realize them. It is also vital that local NGOs providing information and legal services to the refugee and displaced population are strengthened and provided with the necessary resources to fulfil their important role.

C. Refugees from Kosovo

16. The Special Rapporteur would like to draw attention to the plight of Kosovo refugees in Bosnia and Herzegovina, most of them women and children, many of whom continue to live in extremely bad living conditions. The Special Rapporteur visited in early December the refugee camp in a former Coca Cola factory in Hadzici, near Sarajevo, where some 1,200 refugees have been accommodated for months without proper heating and in totally inadequate hygienic conditions, despite the efforts of UNHCR to provide adequate facilities. According to the instructions on the temporary admission of refugees from Kosovo, the refugees are to be granted the right to a temporary stay and necessary assistance. At the time of the visit of the Special Rapporteur, the conditions observed were far from satisfactory and urgent action was needed on behalf of State and Federation authorities to improve the conditions and to transfer the refugees to suitable accommodation. The order for provisional measures issued by the Human Rights Chamber on 4 December based on the application of some refugees, directed the authorities (both the state of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina) to take all necessary steps to protect applicants' health by improving the heating and sanitary conditions in the refugee camp and by considering the applicants' transfer to more suitable premises. The Special Rapporteur, through the field presence of OHCHR, is following closely the steps taken by the authorities to comply with the order of the Human Rights Chamber.

D. Property rights and legislation

17. Due to massive displacement during the war, the destruction of huge numbers of properties and complex wartime property legislation, property violations are among the most pervasive rights violations in Bosnia and Herzegovina. Re-establishing the rule of law in this area is one of the most difficult tasks facing Bosnian society. As described by the Special Rapporteur on previous occasions, property and housing laws were amended in the Federation and entered into force on 4 April 1998. The implementation of these laws faced serious obstacles and there were widespread unlawful practices on the part of municipal housing authorities, which led the High Representative to extend by six months the 4 October deadline for submitting claims to socially-owned apartments. Since the decision to extend the deadline, the registration of claims in most municipalities reportedly has improved. However, deadlines prescribed by the laws for taking decisions are still usually not complied with, and progress on deciding claims is unacceptably low. The overwhelming majority of claimants still have not regained possession of their properties.

18. In the Republika Srpska, property laws were finally passed by the RS National Assembly in late 1998. The laws, which at the time of writing this report were not yet available, will presumably have similar provisions to those of the Federation.

19. It should be emphasized that the passing of the property laws in both Entities was a major achievement, achieved by the exertion of enormous pressure by the international community. Monitoring and enforcing compliance with the laws will require continuing efforts as local authorities are extremely reluctant to implement the laws and thus enable pre-war occupants of property to return.

20. The evictions of illegal occupants, necessary for the reinstatement of returnees to their pre-war homes in Republika Srpska, have continued to encounter delays. Despite repeated interventions by the international community, action by local police to enforce evictions remains weak. The situation of "floaters" (persons illegally evicted from their property during the war, who remain in Banja Luka) remains practically unresolved. There were five reinstatements of "floaters" reported in Banja Luka during August 1998, none during the elections period in September, and a further four in October. In the first half of November five court-ordered evictions were scheduled, but none were carried out. The Helsinki Committee for Human Rights in Republika Srpska reported to the Special Rapporteur the similar situation of minorities in the Bijeljina area, who had been illegally evicted from their properties and had stayed in Bijeljina in desperate living conditions.

E. Economic and social rights

21. The International Covenant on Economic, Social and Cultural Rights, which is binding on Bosnia and Herzegovina, contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of health, to education and to enjoyment of

benefits of cultural freedom. The Covenant obliges States to take steps by all appropriate means, including by adoption of legislative measures, to achieve progressively these rights without discrimination. The Covenant specifically guarantees that men and women possess precisely the same legal entitlements and provides a framework for measures to be taken so that women may enjoy on an equal footing rights which have often been denied to them.

22. Information received from various sources, including the Federation Ombudsmen and local NGOs, indicates that violations of economic and social rights are common and discrimination is widespread. Discrimination in employment on all grounds (including ethnic origin, political affiliation or opinion, and gender) has been singled out as one of the most serious problems and needs to be addressed. There is an urgent need to review current and proposed labour legislation to incorporate non-discrimination principles from the beginning. Mechanisms to protect workers' rights must be developed and implemented.

F. Human rights institutions

1. Commission on Human Rights

23. The Dayton Agreement created institutions specifically to deal with the protection of human rights in Bosnia and Herzegovina. The Commission on Human Rights, created by Annex 6 of the Agreement, consists of the Human Rights Chamber, a judicial body with powers to issue binding decisions, and the Human Rights Ombudsperson, a mediation-oriented body that has powers to conduct investigations and issue recommendations. The Dayton Agreement obligates the Parties to cooperate fully with the Annex 6 institutions and to comply with their decisions and recommendations. In 1998 the cooperation of State and entity authorities with the Commission was impeded by the slow process of appointment of governmental agents to the Commission. Implementation of final and binding decisions of the Human Rights Chamber has been far from satisfactory. With regard to the recommendations of the Ombudsperson, compliance by the RS authorities has improved significantly, whereas compliance by the Federation and the State remains problematic.

2. Entity institutions

24. The institution of the Federation Ombudsmen, established by the Washington Agreement in 1994, is composed of three Ombudsmen, and is competent to conduct investigations into human rights violations in the territory of the Federation. The institution has nine branch offices throughout the Federation. Although the cooperation of the authorities with the Federation Ombudsmen has generally improved during 1998, it remains erratic in more politically-sensitive human rights cases. The Special Rapporteur, closely follows the work of the Federation Ombudsmen and intends to maintain a good cooperation with them. He strongly encourages the RS authorities to create an Ombudsmen-type institution.

G. Rule of Law

25. The establishment of genuine rule of law in Bosnia and Herzegovina is the highest priority. This requires a thorough and comprehensive reform of

the judicial system. The Constitution of Bosnia and Herzegovina stipulates that Bosnia and Herzegovina shall be a democratic State which shall operate under the rule of law. It obliges the State and both Entities to ensure the highest level of internationally recognized human rights and fundamental freedoms. Reality, however, is very different. The task is a difficult one, as Bosnia and Herzegovina has to go through a transition from a socialist system to a democracy at the same time as it is recovering from the conflict that divided the country. However, Bosnia and Herzegovina is in a relatively privileged position, as there are many agencies present, both intergovernmental and non-governmental, which are willing to assist in this process.

26. The main problem is the lack of an independent and impartial judiciary in both Entities. There is lack of transparency and unacceptable political involvement at all stages of judicial process, including the prosecution. For example, in numerous cases of violence against returnees the prosecution of perpetrators is inadequate or totally lacking, even if the perpetrators have been identified. The courts often do not respect the rights of members of ethnic groups, whose cases are left pending for long periods or never taken up. When the courts issue decisions, they are not enforced. The problems are further complicated by the complexity of the legal framework, the destruction of the infrastructure and losses of professional personnel.

27. The establishment of the rule of law requires the restructuring and reform of police, tasks undertaken by the United Nations International Police Task Force. The establishment of multi-ethnic, professional and depoliticized police forces in both Entities, which is still far from having been completed, is vital for sustainable returns of minorities. As reported in the October update report of the Special Rapporteur, Bosnian Serb police officers constitute only 1.17 per cent of the Federation police force. In the Republika Srspka, Bosniaks and Bosnian Croats constitute 2.77 per cent of the total RS police force. The number of women serving in the police forces in both Entities is also far too low - below 1 per cent. Gender specific crimes, such as domestic violence and rape, cannot be properly addressed under the current circumstances. Training of all police should include human rights training and gender sensitization.

H. Missing persons

28. The extent of the problem of missing persons in Bosnia and Herzegovina is huge. Some 20,000 people were reported missing during the conflict, according to data available from the International Committee of the Red Cross (ICRC). It is generally acknowledged that the majority of the missing have died. Allegations of hidden detentions have reportedly decreased and continued to be checked by the ICRC and the United Nations International Police Task Force. Unannounced visits to alleged places of detention and prison facilities have been conducted by both agencies. In 1998 no hidden detainees were found. The process of exhumations and identification will be the most effective and reliable way of resolving the cases of missing persons. In 1998 the joint exhumation process, coordinated by the Office of the High Representative and carried out by teams of local commissions (Bosniac, Serb and Croat), monitored by international experts, has been carried out without

major problems, including across inter-Entity lines. As of 10 December 1998 the number of graves exhumed was 310, with a total of 1,753 bodies exhumed and an identification percentage of approximately 70 per cent.

I. Conclusions and recommendations

29. The Special Rapporteur is once again obliged to conclude that while some improvements in the situation of human rights can be observed, the authorities and political leaders currently in power in Bosnia and Herzegovina continue to undermine efforts aimed at integrating the country, which is divided along ethnic lines.

30. The return process continues to be obstructed in many ways and so far the results have been insignificant, in particular if measured against the efforts and resources spent by the international community. The efforts to improve security have to be stepped up and property rights, as guaranteed in the new property and housing laws in both Entities, have to be respected. The manipulation of returnees and displaced persons has to be stopped. Refugees and displaced persons must be able freely to choose whether to return or stay and they have to be given objective information on conditions for return, including the security situation.

31. A high priority has to be given to the resolution of the situation of "floaters" in Banja Luka and other municipalities in the Republika Srpska. This would send the right signal to others contemplating returning.

32. The transition of Bosnia and Herzegovina into a democratic society built on rule of law and respecting the human rights of all is a long-term process. The Special Rapporteur believes that the presence and the commitment of international community in Bosnia and Herzegovina will be needed for a long time. The programmes and activities of different agencies have been moving in the right direction and coordination of different actors appears to be sufficient and improving. However, the Special Rapporteur believes that local actors, including non-governmental organizations, should be more involved in human rights work, also on the policy level.

33. The prosecution and punishment of war criminals in the International Criminal Tribunal for the Former Yugoslavia in The Hague, which has gained momentum in 1998, has to be speeded up and the indictees still at large, mainly in the Republika Srpska, should either surrender or be arrested. As there is misinformation on the mandate and activities of the ICTY, efforts should be made to improve the knowledge of the population in general of the work of the ICTY, in particular its mandate, procedures and decisions issued so far.

34. The Special Rapporteur believes that the reconciliation process would benefit from the establishment of some kind of truth commission. The local actors whom the Special Rapporteur has spoken with all seem to support this kind of process.

35. The Special Rapporteur believes that accession to the Council of Europe should not be granted before Bosnia and Herzegovina meets the minimum conditions which had been set for the opening of the procedure. The

conditions which had been set for the opening of the procedure. The assessment has to be made on the real situation and not on formal grounds or for political reasons.

II. REPUBLIC OF CROATIA

A. Introduction

36. The present report is based on information compiled from a variety of sources by the Zagreb office of the (United Nations) High Commissioner for Human Rights (OHCHR). It takes into account information from the Government of Croatia, including the Government's reactions to the reports of OHCHR Croatia. It is further based on first-hand field work, the reports of other international organizations, Croatian lawyers, and local and international non-governmental organizations (NGOs).

37. The Special Rapporteur wishes to thank the Government of Croatia, as well as local and international organizations in the field, for their assistance to OHCHR in Zagreb and for their generous cooperation in the exercise of his mandate.

B. Returnees and refugees

38. On a positive note, in the context of the Programme for the Return and Accommodation of Displaced Persons, Refugees and Resettled Persons endorsed by Parliament on 26 June 1998, the Government of Croatia has adopted recommendations for legal reforms related to the return process, which had been suggested by a group of international and government legal experts in October - such as a new Law on Areas of Special State Concern - which are designed to overcome existing discriminatory legal provisions that have impeded return and repossession of property. It is to be hoped that these changes will help ensure the equality of all eligible persons, regardless of nationality, with respect to entitlements, benefits and obligations.

39. The Government, in November 1998, began issuing temporary green cards affirming returnee status to both organized and spontaneous returnees who returned to their places of origin in Croatia, with the intention of making it easier for them to have access to rights and entitlements while awaiting identification and other documents. Preliminary reports, however, note that the temporary cards do not provide substantial benefits, particularly access to health care. The process for acquisition of permanent green cards has been criticized by several international organizations in Croatia as a time-consuming, complicated and expensive process. Returnees are required to provide a large number of documents and are expected to travel several times to regional offices, often at relatively great expense. Spontaneous returnees, who are more numerous than organized ones, find the process even more difficult.

40. Progress in the implementation of core aspects of the Return Programme, such as improved procedures for the repossession of property, has been generally uneven. In this regard, the Special Rapporteur notes with concern that the Government continues to maintain that tenancy rights no longer exist in Croatia and that returnees will not be able to regain such rights. A major

problem for returnees continues to be the occupation of Serb houses by Croat settlers. Also, there is a lack of information about the procedure for obtaining Croatian documents, as well as restrictive administrative requirements to fulfill this procedure. The Special Rapporteur realizes the tremendous difficulties that widespread unemployment and the prevalence of land mines also present to the success of the return process.

41. The complex process of organized returns to Croatia continues to be closely monitored by the international community. On 10 November, a group of 33 persons, the first to be repatriated from the Republika Srpska (Bosnia and Herzegovina) under the Return Programme, came back to Sisak, Kostajnica, Dvor and Petrinja in the former Sector North. Of the 6,930 people cleared for return from the FRY and the Republika Srpska, the Office for Displaced Persons and Refugees (ODPR) reports that 1,541 persons returned under the organized mechanism and 1,172 returned spontaneously.

42. Meanwhile, the Government Commission on Return met on 20 November, its third meeting in six months. Key issues, such as returnee benefits and the provision of alternative accommodation to those currently occupying Serb houses - which could facilitate the return programme, are still outstanding and would appear to require more urgent attention from the Commission.

43. The often-postponed Conference on the Reconstruction and Development of Croatia - the so-called donors' conference to focus attention on Croatia's longer-term development - was finally held in Zagreb on 4-5 December, with 47 countries and 27 international organizations participating. According to local media, the Government was dissatisfied with the donations that the conference produced, while the European Union reiterated its concern on democratization issues.

44. The Office for Displaced Persons and Refugees has recently estimated that around 1,000 asylum-seekers from Kosovo arrived in Croatia through Bosnia and Herzegovina, their first country of refuge. The Ministry of the Interior (MOI) reportedly confirmed, after meeting with international representatives, that border officials would be instructed to allow entry, on humanitarian grounds, to those seeking asylum in Croatia, in keeping with the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to which Croatia is a party by succession. According to the MOI, all applications for asylum will be dealt with on an individual basis. International representatives have met with the MOI to initiate a joint process for the drafting of a national law on asylum.

C. Administration of justice

45. The Special Rapporteur notes that there are some positive signs that the Croatian judiciary is trying to work more effectively and independently. However, there continue to be sporadic rulings which appear to reflect improper ethno-political factors in the judicial process. The appointment, discipline and dismissal of judges is conducted by the State Judicial Council, which operates under a law that has been criticized by international observers and which the Croatian Government is attempting to amend. The proposed amendments, which at this writing are still in parliamentary discussion, appear positive in that they aim to increase judicial efficiency, but this

improvement may come at the expense of greater control over the judiciary by the executive branch. The Special Rapporteur has learned that disciplinary proceedings concerning the former President of the Supreme Court, Krunislav Olujic, were marked by the Council's refusal of Dr. Olujic's request to introduce new evidence on his behalf, while the prosecution was allowed to introduce new incriminating evidence.

46. Many Croatian courts suffer from an enormous backlog of cases. The Special Rapporteur has learned from the latest report from the Minister of Justice that there are over 1 million unsolved cases. The Croatian Government has yet to introduce an effective solution of this difficult problem which, along with the court fees that place judicial remedy out of the reach of many Croatians, jeopardizes the public's faith in the judicial system as an effective remedy. Certain cases are settled with extraordinary speed while other cases remain unsolved for a disproportionate amount of time, both a reflection of external intrusions into the courts. It is with concern that the Special Rapporteur notes that some positions for judges remain unfilled and that judges are not provided with adequate staff and resources.

47. It has come to the Special Rapporteur's attention that some court decisions have not been adequately enforced. According to the Norwegian Refugee Council's Civil Rights Project, rulings regarding the return of property have at times remained unenforced for several years despite numerous court orders for eviction and subsequent orders to enforce the eviction. The Special Rapporteur is further concerned that the Magistrate Courts in the Danube Region exclude the public from all hearings. This exclusion stems from explicit instructions from the Supreme Court in Zagreb. Furthermore, judges work under the pressure of the Supreme Court President's order to not cooperate with international observers.

D. War crimes trials

48. As has frequently been noted, the adoption of the 1996 Amnesty Law was a positive step toward reconciliation. However, ambiguities and uncertainties with regard to the law's application continue to exist. In the meantime, a number of cases regarding war crimes remain unresolved. According to a list of the Government of Croatia dated 14 September 1998, a total of 61 persons are currently imprisoned on charges of war crimes. In addition, according to information received by the Special Rapporteur, an unknown number of people have been either convicted *in absentia* or indicted. This has created a general atmosphere of uncertainty among the Serb community, and is an inhibiting factor in the return of Serbs to Croatia.

49. Some progress has been made in the case of the so-called Sodolovci group, a group of 19 individuals from the village of Sodolovci, charged on 30 August 1994 with crimes against humanity and humanitarian law violations against the civilian population and convicted *in absentia* on 25 May 1995. During the second half of 1998, a number of important developments in this case occurred, namely the arrest and subsequent release of three members of this group. On 20 July, the Supreme Court accepted the appeal lodged by eight members of the group - including the three individuals arrested - against the decision of the Osijek County Court of 21 May rejecting their requests for retrial. The Supreme Court annulled the decision and returned the case to the

first instance court for reconsideration and a new decision on retrial. The appeal of two members of the group was rejected on the basis that they resided in the FRY.

50. One important issue in this case had been the question whether there would be a possibility to waive the custodial requirement while the retrial was in process, which the group had been promised previously in an agreement between the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) and the Government of Croatia. After a decision of the County Court of Osijek on 31 August, the three individuals were released and allowed to remain at liberty while standing trial. On 7 September, another of the eight mentioned above surrendered to the police and was released on 11 September, and will also be granted retrial without being subject to detention. According to one source, an additional number of the remaining members of the Sodolovci group have stated their willingness to stand trial before a Croatian Court if given the same treatment as the four individuals noted above. The main hearing in this case began on 10 September during which the three accused pleaded not guilty. It was adjourned without specification of the date for the next hearing.

51. In the ongoing trial of another member of the Sodolovci group, Goran Vusurovic - whose case was described in detail in the Special Rapporteur's report to the General Assembly (A/53/322) - a hearing scheduled to take place from 1-3 September was cancelled due to the absence of a ballistics expert in Zagreb. As of this writing no new date for the next hearing has been announced.

52. Regarding the case of Milos Horvat - discussed in detail in a previous report of the Special Rapporteur (E/CN.4/1998/14, paras. 60-61) - who was sentenced on 25 June 1997 to five years in prison on charges of genocide, the Supreme Court considered his case on 16 December 1998. At the time of writing, the decision had not yet been announced.

53. Sixteen prisoners are currently detained in Split prison, in accordance with three different verdicts. All allege that after their arrest they were mistreated or tortured by police officials for the purpose of obtaining information and/or confessions. Statements claimed by defendants to have been extracted under torture or ill-treatment were not removed from the record but were admitted as evidence. Both international and local trial observers and lawyers noted deficiencies in the application of international standards of fair trial, such as the presumption of innocence, and lack of evidence of the alleged act, and thus the failure on the part of the Court to prove the alleged offence of war crimes as stated in the indictments.

54. The first of the above noted indictments concerns 39 persons convicted by the Split County Court in May 1997 for artillery and other weapons attacks against civilian targets, for forcing a mass exodus of civilians, and for looting and burning property and otherwise terrorizing civilians during the war. They were found guilty of violating article 120, paragraphs 1 and 2, as well as article 122 of the Criminal Code of the Republic of Croatia for mass killings and material damage and received sentences of between 5 and 20 years in prison. Twenty-seven of the prisoners were tried <u>in absentia</u>, while 10 are currently in Split County Prison and two have been transferred to Lepoglava

Penitentiary. The court found all indictees collectively guilty for criminal acts based on their individual responsibility in contributing to a planned criminal plot. Their appeals with the Supreme Court have been pending since the issuance of the verdict.

55. One individual among the group, Petar Bjelobrk, was subject to three indictments. He had been in the United Nations Confidence Restoration Operation (UNCRO) camp in Knin and was handed over by the United Nations to the Croatian authorities. According to information received by the Special Rapporteur, when Mr. Bjelobrk was first taken from the camp, he was indicted - in accordance with article 120 of the Croatian Criminal Code - on charges of murder and raping old women. After the charges were reportedly dropped, he was recharged with armed rebellion under article 235 of the Criminal Code. However, he was allegedly not amnestied as were the other 38 persons of a group of 39 handed over by the United Nations to the Croatian authorities, because it was held that he, as a reserve officer, was an organizer and thus more responsible for the armed rebellion. He was subsequently charged with mining the Peruca dam and sentenced to 14 years' imprisonment. According to information received by the Special Rapporteur, an expert in explosives testified on Mr. Bjelobrk's behalf, noting that it would have been impossible for him to have committed the alleged act.

56. Another eight persons, known as the Stikovo group, were convicted of having committed war crimes, under article 120, paragraph 1, of the Croatian Criminal Code. Five among the group have been detained in Split prison since August 1995. The remaining three have been convicted in absentia. The charge against them was based on the fact that from August 1991 to August 1995, the group had been organized as a Stikovo platoon of the army of the so-called Republic of Serb Krajina. Their trial, held in Split County Court, did not begin until March 1998, and lasted three months. Most have been convicted to between 12 and 20 years' imprisonment. According to a number of observers the trial fell short of international standards of fair trial with, for instance, the Court allegedly having failed to establish individual guilt for the crimes listed in the indictment. Their appeals have since been pending with the Supreme Court.

E. Freedom of expression and information

57. A key issue concerning the media in Croatia continues to be the situation of HRT (Croatian Radio and TV), its role in political and public life, and the difficulties in attempts to widen and democratize HRT management and subsequently programming. The proposed new act on HRT, based on suggestions by international organizations, resulted in another protest by opposition MPs. One draft was debated in the House of Representatives on 18 October. Following the official conclusion of the discussion, the ruling party added two amendments, one of which granted seats on HRT's council to expatriate Croatians. Many opposition members deemed this procedure illegal, and boycotted in protest. The suggestions of the Council of Europe's media experts, particularly in regard to the composition of the management, have so far been overlooked. Recommendations by the international community included provisions concerning representation on the HRT Council and procedures for the appointments of the managing director and the supervisory board.

58. The Special Rapporteur notes that there have been allegations of interference by the Croatian secret service in the work of some newspapers, including illegal tapping of telephones, especially those of journalists. These serious allegations have not been adequately investigated by the Government.

59. The Croatian media continues to work under the restriction of a law which has resulted in over 400 lawsuits against journalists for "emotional anguish" which allegedly results from their articles. Furthermore, journalists can, and in several cases, do face criminal prosecution for defamation of the President of the Republic, the Prime Minister, the Supreme Court President, the Speaker of Parliament and the President of the Constitutional Court.

F. Missing and detained persons

60. To date, the Government of the Republic of Croatia lists 1,824 persons as officially missing in the 1991-1992 conflict, and approximately 800 missing since the 1995 army operations "Flash" and "Storm". The majority of the missing are Croats, and the official list also includes Serbs, Muslims and nationals of Hungary, Russia, Albania, Slovenia, the Czech Republic, Ukraine, Germany, Romania, Argentina, Austria, Italy, the former Yugoslav Republic of Macedonia and France.

61. Between September 1995 and December 1998, a total of 2,850 bodies were exhumed from both individual and mass graves, and 2,134 bodies identified, according to information provided to OHCHR in Zagreb by the Commission for Detained and Missing Persons (hereinafter, the Government Commission). In 1998, 33 mass graves were opened, 30 of them in the Danube region - including the New Cemetery in Vukovar - one in the county of Karlovac and two in the county of Sisak-Moslavina, with a total of 1,145 bodies exhumed, of which 718 were positively identified. The mass grave in the New Cemetery in Vukovar, exhumed between 28 April and 26 June this year, is the largest in Europe since the 1939-1945 war. Of the 938 bodies exhumed from this cemetery, 622 had been identified by early December. Overseeing the exhumation process are experts from the Ministries of the Interior, Defence, Health and Justice, and of the Government Commission. Also present are representatives of the European Community Monitoring Mission (ECMM) and the International Criminal Tribunal for the Former Yugoslavia (ICTY).

62. Discussions at the 38th meeting of the Croatian Government Commission and its FRY counterpart in Belgrade on 28-29 October reportedly included discussions over the handing over by the FRY of some 300 protocols of Croatians who were killed and buried in the FRY in 1991-1992, in exchange for the 669 protocols already submitted by Croatia. The Government of Croatia maintains that the Granic-Jovanovic Agreement announced in August, outlining details for the release from Croatian and FRY prisons of illegally detained prisoners-of-war on an "all for all" principle, should be respected in its entirety. The Special Rapporteur, however, notes that the FRY Commission stated at the meeting that the implementation of this Agreement was not within its jurisdiction but came under the Ministry of Justice. Consequently, the meeting was unable to establish any criteria for the exchange of prisoners.

G. Liberty and security of the person

63. As reported by the OSCE Police Monitoring Group, there was a recent decrease in the number of reported incidents of ethnically motivated intimidation in the Danube region, a fact that it ascribes to the steady exodus of Serb residents. It is also reported that the nature of the incidents has shifted from being predominantly housing-related to being overwhelmingly non-housing-related.

64. The Special Rapporteur is concerned that, according to the Joint Council of Municipalities in Vukovar, of the 56,138 Serbs domiciled in the Danube region in 1995, 27,178 have since left the region. The fact that many are emigrating to the FRY, with few economic prospects, leads the Special Rapporteur to express his concern that factors such as the lack of personal safety and the slow process of reconciliation are among the major causes of the continuing departure of Serbs from Croatia.

H. Labour rights

65. It is with concern that the Special Rapporteur notes that over 100,000 workers in Croatia continue to suffer from late payment of wages - at times delayed for two years - reduced wages or no wages at all. The Croatian government has not yet established an effective remedy for this situation. Strikes on this issue have been banned by the Supreme Court, a decision that leaves workers with the judiciary as their only remedy. However, because of the slow speed of the courts and the frequency with which companies declare bankruptcy before paying court-ordered arrears, workers do not find this an adequate solution. In certain State-owned companies in the Danube region, management disclaims responsibility for paying wages, the result - apparently - of a privatization process that lacks transparency. Compounding the problem of non-payment, the Ministry of Labour and Social Welfare's labour inspectors are not provided with adequate resources to be an effective investigative mechanism to enforce the payment of wages.

66. Union shop stewards, the trade union representatives within companies, work under special protection of article 182 of the Croatian Labour Law. In practice, however, there are cases of harassment. Several cases of shop steward harassment are pending in court and these decisions and their enforcement will reflect the degree of protection that shop stewards are actually afforded, a protection which the Special Rapporteur notes as one of the cornerstones of union rights. One union leader, Bozica Jurec, has appealed for the third time her conviction (and prison sentence) for allegedly slandering an employer in statements which appear to fall well within the expected work of a trade unionist. This case has also been marked by decisions being delivered within days, a speed which indicates that the court could be operating under external pressure. This decision could effectively silence this union leader and the difficulties which this lawsuit has created for Ms. Jurec has, the Special Rapporteur fears, served as a threat to the freedom of expression and the work of unionists.

67. Several articles from a 1996 Agreement between the Government and two trade union confederations have not been enacted. The Special Rapporteur would like to draw attention to two important and unenforced clauses of this

Agreement: clause No. 8, which guarantees that labour-related cases be handled within one year; and No. 9, which orders that the government calculate a Croatian "consumer basket", a monetary amount with which a four-member family could procure food, clothes and shelter, and which, when calculated, should be used to establish a reasonable minimum wage.

I. Gender issues

68. In September 1998 the Special Rapporteur began monitoring the situation of gender rights in the Republic of Croatia. He commends the praiseworthy national policy for the promotion of equality to be implemented by the State Commission on Issues of Equality established in May 1996, in compliance with the Convention on the Elimination of All Forms of Discrimination against Women.

69. The new Criminal Code, which came into force in 1998, contains provisions that seem inadequate to protect certain rights of women. Specifically, provisions referring to the prosecution of cases of domestic violence, as prescribed in article 102, paragraph 2, of the Code, for the criminal act of inflicting physical injury, and for the criminal act of rape (art. 188, para. 5), state that when perpetrated within the family (except against children) or among partners, these acts will be prosecuted only following a motion by the victim; the former Criminal Code provided for ex officio prosecution for the same crimes. Under the new law neither physicians nor the police are legally obliged to report severe physical injury to the State Attorney. The Special Rapporteur acknowledges that this law protects the privacy of victims, but he expresses serious concern regarding these changes. They could, in effect, increase the number of unprosecuted acts of domestic violence which, reportedly, are on the rise in Croatia.

70. One case of reported sexual harassment in the workplace occurred in Split in August. A female doctor and five female patients and employees of the Split Clinic Hospital accused the Chief of the Orthopaedics Department of sexually harassing and intimidating as well as blackmailing them by threatening to transfer them to lesser-paid jobs, forbidding them from performing operations and preventing them from receiving promotions. The doctor and her colleagues reported the case to the Commission on Medical Ethics and the Croatian Physicians' Assembly, which then conducted an investigation and concluded in its report that there was a grave violation of the code of medical ethics. The case is currently at the Court of Honour of the Croatian Physicians' Assembly which is to issue a penalty. It raises concern, however, that no preventive action has been taken by the hospital's management.

71. The Special Rapporteur voices concern over the unequal representation in the country's public, political and economic life that women face. Women's participation in the national parliament and in regional and municipal political structures has dropped significantly since 1990, a trend that was confirmed in the 1997 elections.

J. Conclusions and recommendations

72. The Special Rapporteur continues to express his concern at the uneven and slow progress of returns, and at reports of the inefficacy of the Housing Commissions, the essential element in the return programme. With regard to the return process, the Special Rapporteur recommends that the question of tenancy rights be addressed by the Croatian Government, as has been done by Bosnia and Herzegovina, in order to foster the return of Serbs to their former homes in urban areas, and that the Government provide all Housing Commissions with alternative accommodations for equitable distribution. The Special Rapporteur urges the Government to undertake reconstruction and economic revitalization projects which directly benefit all ethnicities. Furthermore, the Special Rapporteur recommends that the National Committee for Reconciliation create concrete projects and measures to benefit all citizens of Croatia.

73. The Special Rapporteur recommends that the Croatian government begin to provide sufficient resources to the judiciary as well as to fill all empty posts, in order to alleviate the burden of unresolved cases. He welcomes educational programmes for new Croatian judges. Delays in - and lack of enforcement of - court rulings should be of primary concern to the Croatian Government, and the Special Rapporteur recommends that steps be taken to guarantee the execution of court orders.

74. The Special Rapporteur notes with concern the attitude of certain court officials toward international observers as well as the general public. He urges that all court proceedings be opened to the public, in accordance with Croatian law, and that international observers be granted full cooperation.

75. Perpetrators of war crimes must be brought to justice. However, at present, the process of prosecuting perpetrators of war crimes is not conducted in accordance with international standards. As the above cases show, there have been serious shortcomings in the trials of persons convicted for war crimes, such as a lack of credible evidence. Some trials have been ongoing for several years, and the appeals with the Supreme Court have been subject to unreasonable delays. On the other hand, violations of human rights committed during or in the wake of operation "Storm" in 1995, documented by the Special Rapporteur in previous reports (see A/50/727) have never been adequately addressed by the Government. The prompt resolution of outstanding issues relating to war crimes is crucial for reconciliation and democratization to take place.

76. The Special Rapporteur wishes to express his concern at the ruling party's domination of the media and urges the Government to adopt the necessary measures to ensure that public broadcasting can fulfil a public interest mandate and is independent of political or financial interests. With regard to defamation suits, due attention should be given to the importance of free political debate in a democratic society and to the fact that public figures must expect to tolerate a greater degree of criticism than private individuals.

77. The Special Rapporteur notes that labour-related cases require prompt resolution, preferably by courts which specialize in such issues, as dictated

by the November 1996 agreement with trade union confederations. Furthermore, the Special Rapporteur recommends that the labour inspection force of the Ministry of Labour and Social Welfare be granted adequate funds so that it can investigate widespread instances of non-payment or late payment of wages.

78. The Special Rapporteur encourages the State Commission on Issues of Equality and women's non-governmental organizations to continue strengthening their cooperation and to work closely on the full implementation of the national policy on the promotion of equality. The Special Rapporteur encourages specific affirmative action, such as the introduction of a quota system, for improving women's representation in decision-making and political positions in the country's public life.

III. FEDERAL REPUBLIC OF YUGOSLAVIA

A. Introduction

79. Since his appointment in late March 1998 through this writing, the Special Rapporteur has conducted three comprehensive field missions to the Federal Republic of Yugoslavia (FRY): (1) from 5-8 April 1998; (2) from 10-21 September 1998; and (3) from 21-29 October 1998. He submitted a letter on his first visit (E/CN.4/1998/164) to the Chairman of the Commission on Human Rights, whose statement of 24 March 1998, requesting that the Special Rapporteur undertake a mission, had focused on concern over developments in the province of Kosovo. During his first mission, the Special Rapporteur visited Belgrade and Pristina. On his second visit, he travelled through Montenegro, Sandzak and Kosovo and raised countrywide issues such as the administration of justice, freedom of expression, and the rights of persons belonging to minority groups. Shortly after the 13 October accord between FRY President Slobodan Milosevic and United States envoy Richard Holbrooke and the 16 October agreement with the Organization for Security and Cooperation in Europe (OSCE) which created the Kosovo Verification Mission, the Special Rapporteur returned to the FRY. During this visit, he focused on rapidly evolving developments in Kosovo and on the situation of media in Serbia, in the wake of government restrictions on independent newspapers and broadcast media.

B. Steps to provide current information

80. The Special Rapporteur stresses that given the pace of developments in the FRY, particularly the volatile situation in Kosovo, it is likely that elements of this report will have been superseded by other events before the document is published. Therefore, he will take extra steps to provide the Commission on Human Rights with timely analysis and information. He takes the opportunity of this report to describe ongoing concerns and matters that require further examination. The Special Rapporteur also notes certain developments in the situation of human rights in the FRY that hold promise for the future.

C. Sources of information

81. This report is based on information from a variety of sources. It takes into account materials provided by the Ministry of Foreign Affairs of the FRY,

including aides-memoire and correspondence with the Special Rapporteur and the Office of the High Commissioner for Human Rights (OHCHR). It is based on first-hand observations, as well as on discussions with government officials, community leaders, refugees and displaced persons, intergovernmental and non-governmental organizations (NGOs), legal professionals, and representatives of official and independent media. It draws in particular on court documents and correspondence with the Serbian Ministry of Justice and the Montenegrin Ministry of Justice. The Special Rapporteur regrets, however, that at this writing the Serbian Ministry of Internal Affairs has neither responded to inquiries nor provided information promised during the Special Rapporteur's discussion with the republican minister on 6 April 1998. The information requested concerns not only the increasing use of the Ministry of Internal Affairs' public grievance procedure, described by the minister to the Special Rapporteur, but also reports of torture and ill-treatment of specified individuals in police custody.

D. Relations with the FRY

82. The Special Rapporteur and OHCHR have enjoyed the cooperation and support of the Government of the FRY and the republican governments of Serbia and Montenegro in carrying out the visits that form the basis of this report. In November, the Federal Republic of Yugoslavia (FRY) and OHCHR concluded a status agreement. The agreement, the first of its kind in any of the countries on the territory of the former Yugoslavia, provides for nationwide human rights protection and promotion. The Special Rapporteur welcomes in particular the initiative by the office of the President of Serbia and the Serbian Ministry of Justice to consult with OHCHR in resolution of pending concerns regarding the administration of justice. He appreciates the efforts undertaken by the government of Montenegro, in particular its President, Prime Minister and ministries of justice, information, and minority affairs, to facilitate the work of OHCHR.

E. Kosovo

83. The ongoing crisis in the province of Kosovo has dominated international attention to the situation of human rights in the FRY, and the Special Rapporteur has devoted special attention to its nature and consequences. He stresses that the crisis in Kosovo is not new or isolated. The immediate crisis of politics, diplomacy and human rights engendered by the violence in Kosovo is based on long-standing systemic causes within the FRY which, if not addressed throughout the country, threaten national and regional security.

84. Though violence in Kosovo decreased since the Special Rapporteur's October mission, no political agreement had been reached by late 1998 to implement the general framework set out in the 13 October accord. Representatives of an enlarged Kosovo Diplomatic Observer Mission (KDOM) continued to monitor events and, at this writing, the OSCE announced that the Kosovo Verification Mission (KVM), which had deployed its advance team, was to begin operations in mid-January 1999. In this environment, violations of human rights that had characterized the crisis in Kosovo for many months were continuing to occur. Violations threatening security of the person continued unchecked in detention and arbitrary detention. There were new allegations and reports of summary execution. Other serious violations assumed a pattern

of attack and retaliation resembling events in February, March and early April 1998. Violations were attributed to Serbian security forces, the Kosovo Liberation Army and armed persons representing paramilitary groups and village defence units.

85. Accurate information about the statistical scope of conflict in Kosovo has been difficult to obtain. The elusive nature of the numbers has affected events on the ground and attempts to defuse them. New and often conflicting numbers of persons killed, wounded, abducted, arrested and alleged missing, as well as those displaced from the areas of conflict or returning to the region, have appeared every day. The numbers in any category cannot be exhaustively confirmed, and security considerations have often prevented access to areas of concern. After the 16 June "Moscow declaration", diplomatic missions accredited in the FRY increased their presence in Kosovo. Diplomatic monitors concentrated on patrolling conflict areas and gathering general information on the scope and nature of armed activity, but have had no single mandate and no specific human rights monitoring responsibilities. At this writing, the OSCE verification mission was defining an understanding of the "human dimension" of the 16 October agreement, to include democratization and the organization and conduct of elections. As a result, specialized information from intergovernmental sources on the situation of human rights in Kosovo was coming principally from United Nations field presences.

86. In his letter of 8 April, the Special Rapporteur focused on human rights concerns related to operations carried out by the Serbian Ministry of Internal Affairs in the Drenica region during late February and March 1998 and to the activity of armed Kosovo Albanians during that same period. In the following months, the increased intensity of armed hostilities between government forces and armed groups of the "Kosovo Liberation Army" (KLA) and gross violations attributed to all sides lessened only in October after days of negotiations under threat of NATO intervention. In the first week of December, violence reached its highest level since the 13 October accord. After a long period of sustained armed confrontation along fluid front lines, the nature of the conflict had returned to a stage of isolated attacks and retaliations, dramatically illustrated by cases of abduction, arbitrary detention, and reports of summary executions. Testimonies gathered by the Special Rapporteur in the field suggest that, throughout the conflict, government forces have used excessive force, including deliberate destruction of property, leading to extensive civilian casualties. Concerns raised in the Special Rapporteur's 8 April letter, as well as in his report to the fifty-third session of the General Assembly, remain unaddressed.

87. Recent months have been marked by more discoveries of concentrations of corpses and evidence of massacres, including the massacre of civilians. Serbian authorities announced that, on 27 August, in the village of Klecka, they discovered in a makeshift crematorium what they believed to be the remains of civilians abducted and then killed by the KLA. The exact number, identity, age, and sex of the persons who died at Klecka has yet to be determined. Shortly after the discovery of the Klecka site, the remains of at least 39 persons were discovered in nearby Glodjane where exhumation was continuing at year's end. On 29 September, the badly mutilated bodies of 14 Kosovo Albanians, including six women, six children and two elderly men, were found in a forest near Gornje Obrinje in the Drenica region. There are

reports that on 26 September 1998 another 14 Kosovo Albanian men were killed in Golubovac, near Gornje Obrinje. In early October, police discovered the remains of four persons, believed to have been abducted by the KLA, in a pit close to the copper mine in Volujak near Klina. Two more bodies were found on 4 October near Gremnik, and returning displaced persons continue to report coming upon human remains.

88. As a result of efforts by the European Union and other international organizations, including OHCHR and ICTY, and the Government of the FRY, some progress has been made in initiating independent investigations into these alleged arbitrary killings. On 20 October, a team of experts from the Institute of Forensic Medicine at Helsinki University arrived in Belgrade, following clarification of the experts' terms of reference in contacts between the Finnish and FRY ministries for foreign affairs. The team has authorization from government authorities to investigate grave sites in Glodjane, Golubovac, Gornje Obrinje, Volujak, Klecka and Orahovac; it began work at Gornje Obrinje on 10 December. Information gathered by the team will be shared with the Serbian Government and the European Union. The team has also been asked by both Kosovo Albanian and Serb non-governmental sources to investigate perhaps as many as a dozen other sites. Despite official authorization, the team has encountered delays and obstacles in its cooperation with authorities and found its investigations complicated by ongoing Serbian forensic examinations in certain cases. Preliminary examinations, as well as contemporary media reports and first-hand observations, suggest that some sites have been tampered with, compromising and complicating forensic investigation. Considering the nature of these crimes, the Special Rapporteur stresses the importance of full cooperation with the International Criminal Tribunal for the Former Yugoslavia.

89. The Special Rapporteur remains concerned about the fate of the Serb, Kosovo Albanian and Roma civilians and Serbian police officers abducted by armed Kosovo Albanians, believed to be KLA. He has appealed directly for their release. Efforts continue to determine whether any newly discovered grave sites contain the remains of those believed abducted. According to information received from the FRY authorities, as of 7 December 1998, 282 civilians and police had been abducted by Kosovo Albanians. Of these, the fate and whereabouts of 136 persons were still unknown; others were released, escaped, or had been identified as killed.

90. Information on the activity of Kosovo Albanian paramilitary "tribunals" has become public since the 13 October accord. The activity of the "tribunals" suggests a pattern of arbitrary arrest. On 30 October, two Kosovo Albanian activists associated with the Democratic League of Kosovo were arrested by the KLA in Malisevo and placed under interrogation before being released on 1 December. A KLA communiqué also acknowledged that two additional individuals had been executed. On 31 October, according to a communiqué, the KLA arrested three men and killed a fourth near Podujevo for "alleged criminal activity". On 1 November, a KLA "military court" sentenced two abducted Tanjug journalists to 60 days of detention for having committed violations of KLA regulations, respectively "the military police book of regulations, chapter VIII, item 5, page 27". Representatives of international agencies, including ICRC and OHCHR, were not allowed to visit the abductees who were released to the KVM after 41 days of arbitrary detention. On

9 November, in Srbica, KLA forces abducted the third and fourth Serb civilians taken since mid-October. Family members of the victims and villagers from Leposavic organized the arbitrary detention of roughly 25 Kosovo Albanian passengers from an intercity bus. All of them were released on 11 and 12 November in exchange for the two abducted Serbs. On 17 November, near Podujevo, KLA members abducted a Serbian police officer. On 23 November, the KLA issued a communiqué stating that it had "arrested" the police officer and other Albanian "collaborators". On 24 November, through the actions of the United States element of the Kosovo Diplomatic Observer Mission, the officer was released. The Special Rapporteur denounces these abductions as grave violations of basic principles of international human rights and humanitarian law.

91. The Serbian Ministry of Justice has confirmed to the Special Rapporteur that more than 1,500 persons, including 500 in absentia, are currently being investigated under suspicion of involvement in anti-State activities and in activities of the KLA. The number of persons in actual custody is difficult to obtain, as "custody" includes persons in pre-arraignment police detention, under the auspices of the Ministry of Interior and in investigative or post-sentencing detention, under the auspices of the Ministry of Justice. Serbian security officials in Kosovo have arrested and held in police detention large numbers of individuals for periods ranging from several hours to several days. The routine police "screening" of male returnees, however, had abated in the aftermath of the 13 October accord. Persons in police detention are routinely held incommunicado, without access to attorneys, longer than the three-plus-one days of pre-arraignment detention allowed by law. Their families are not informed of their arrest or of their release from police detention. The number of persons subsequently arraigned and held in investigative detention is unclear, as the ICRC is not routinely and regularly informed of arraignments by the Ministry of Justice. As a result, the Special Rapporteur can only estimate, as have the Serbian Minister of Justice and defence attorneys, that from 1,500 to 1,900 cases were pending in late 1998 on charges related to terrorism, anti-State activity or aiding and abetting such activity. This does not include persons in police detention or persons called for "informative talks" by the police, whose number is absolutely unknown and whose names are known only anecdotally or when reported on a case-by-case basis by NGOs or family members.

92. The Special Rapporteur notes that, two months after the 13 October accord, implementation of the last two points of the accord, which concern prosecution in State courts, remained unclear. The Serbian Minister of Justice had sent teams of prosecutors to district courts in Kosovo to examine individual cases, and court officials confirmed to the Special Rapporteur that they had participated in working sessions with representatives of the Serbian Ministry of Justice and the office of the President of Serbia. The Ministry of Justice, together with the federal Ministry for Foreign Affairs and the office of the President of Serbia, have solicited OHCHR's cooperation in resolution of individual cases and categories of cases pending in Kosovo to which OHCHR or the Special Rapporteur have drawn particular attention. These efforts resulted in the release of several individuals from pre-trial detention and/or pending appeal. Those released include some medical and humanitarian workers and juveniles on whose behalf the Special Rapporteur had appealed. New arrests, trials, and sentencing continued. The Special

Rapporteur and OHCHR continue to raise individual cases of alleged human rights violations of detainees and, in early December alone, submitted to the Serbian Ministry of Justice over 50 requests for clarification of alleged violations regarding persons in Ministry custody, including elderly and infirm detainees.

93. Arrests, trials and sentencing are most numerous in the districts of Prizren and Pec, in which the bulk of armed activity has occurred and where a total of approximately 1,350 cases were pending at the end of the year, far exceeding the number of cases in the courts of Kosovska Mitrovica, Pristina, Prokuplje and Gnjilane combined. The district court in Prizren, which had been holding trials related to allegations of terrorism and anti-State activity on a regular daily basis, suspended trials from 31 October through 9 November so that, according to the court president, case review could be conducted. The district court in Pec, however, continued to hold up to four trials a day, except when weather or security conditions prevented transport of defendants to court. At this writing, the Special Rapporteur had recorded 92 completed decisions of courts of first instance throughout Kosovo, but that figure was by no means comprehensive and only included court documents at hand. Of that number, nearly all decisions had been convictions, with only eight acquittals. Sentences ranged from 60 days to 13 years, with the majority of sentences from two to five years. For sentences of less than five years, until they have been confirmed by a court of final instance, detention is not mandatory during the appeals process, but most so sentenced have been detained nonetheless.

94. The Special Rapporteur is alarmed at consistent disregard by Serbian State security forces of both domestic and international standards pertaining to police conduct and treatment of detainees, illustrated by a growing number of cases of arbitrary detention and systematic ill-treatment, abuse and torture, including five deaths in custody. Throughout Serbia, persons are arbitrarily detained by the police for questioning or held in pre-trial detention longer than the period mandated by law. Their families are not informed of their arrest or of their release from police detention. Lawyers report that they experience serious difficulties in gaining access to their clients and are generally not allowed to consult their clients in private. In practice, pre-trial detainees in police (investigative) and court (post-arraignment) custody are not permitted access to their own physicians, but only to official physicians provided by the police or court. Official physicians do not report injuries sustained by detainees during police interrogations, even when those injuries are obvious, and do not provide adequate medical treatment. These serious violations occur when persons are held in pre-arraignment custody under the auspices of the Ministry of the Interior, or in investigative detention and after court sentencing under the auspices of the Ministry of Justice. In his discussions with the Serbian Minister of Justice, the Serbian Minister of the Interior, and the FRY Foreign Minister, the Special Rapporteur strongly emphasized the urgent need to end impunity for security officials and others responsible for human rights abuses.

95. As an illustrative example of arbitrary process by police and judicial officials, disregard for the rule of law and violation of domestic and international standards, the Special Rapporteur notes the case of attorney

Destan Rukiqi, arrested in his office in Pristina on 23 July. The same day Rukiqi was arrested, he was tried and sentenced to the maximum 60 days in prison for "disturbing public order". The Serbian Ministry of Internal Affairs brought charges against Rukiqi based on an investigative judge's claim that Rukiqi had insulted her by saying she had behaved like a policeman. Rukiqi made the remark after the judge had denied him his right as a defence attorney, guaranteed under the Law on Criminal Procedure, to unconditional review of court files relating to a client. Six days after sentencing, Rukiqi was taken to hospital suffering from kidney injuries allegedly inflicted in the Pristina prison. Rukiqi was finally transferred to the prison hospital in Belgrade, where he stayed till 22 August when he was released by a decision of the Supreme Court of Serbia overturning the sentence on procedural grounds. The court did not enter into the merits of Rukiqi's arrest, conviction, or treatment during detention, but argued that the maximum sentence was unmerited. The Special Rapporteur has spoken with the hospital administrator of the Belgrade prison hospital and with Rukiqi himself; both attested to Rukiqi's medical condition on arrival in Belgrade and adequate medical treatment provided him in the Belgrade prison hospital.

96. The Special Rapporteur is concerned at widespread abuse of the investigative procedure of "informative talks", which has amounted to harassment of targeted or vulnerable populations and individuals. Summons to such talks can by law be issued only in the event of criminal conduct or to gather direct information on criminal activity under investigation.

F. Restrictions on free expression

97. In October 1998, the Serbian Parliament adopted a Law on Public Information, which has limited the scope of media coverage and effectively restricted available information within the Republic and in the country as a whole. The law forbids transmitting or delayed re-transmitting of radio and television broadcasts of " a political-propaganda nature ... from foreign broadcast organizations founded by foreign governments". It prevents the publication of material that "calls for the forced overthrow of the constitutional order, jeopardizes the territorial integrity of the Republic of Serbia and the Federal Republic of Yugoslavia". Charges under the law on public information are brought and heard in the Serbian Court of Petty Offences, an administrative - not judicial - tribunal, whose officials are Government appointees with limited tenure. The law's expedited notice, hearing, and sentence procedures contravene existing law on petty offences. Execution of a first-degree court decision is not suspended or postponed during the appeal process. The law specifies that fines levied must be paid within 24 hours. Finally, it requires that the defendant prove that alleged damages that are the subject of the proceeding against him were not caused by his own negligence, which appears to undermine the principle of presumption of innocence.

98. Since adoption of the law, four independent newspapers, Danas, Dnevni Telegraf, Nasa Borba and Evropljanin, and two radio stations, Radio Senta and Radio Index, have ceased activities in Serbia proper. On 23 October the Belgrade court of petty offences fined the weekly publication Evropljanin roughly US$ 230,000. The Special Rapporteur was physically present when, executing garnishment orders late at night, court bailiffs and police removed

furniture and equipment of the publication. Some print media have been re-registered in Montenegro, from which they are distributed in Serbia. Nevertheless, the information law was recently applied against the independent Montenegrin weekly Monitor, which was fined 2.8 million dinars and has at this writing been seized three times by police officials in searches of Montenegro-Serbia transport. Moreover, in the Monitor case, the Court of Petty Offences determined that legal and appropriate notice was served by broadcasting the summons over Radio Jugoslavija at 19.55, 20.55 and 21.55 hours for the defendants to appear in Belgrade at 10.00 the next morning.

99. In early December, having determined that statements had been made to justify State action under the law, the Court of Petty Offences in Nis brought charges against independent TV Nis for broadcasting allegedly slanderous statements by an opposition party member against members of the ruling Socialist Party of Serbia. When the ruling party members withdrew their complaint, the court - which had already determined sufficient cause for prosecution - also withdrew from prosecution. On 25 November, the Serbian Ministry of Information indicated that the Albanian-language media were not privileged and that the law would be implemented on the entire territory of Serbia.

G. Restrictions on academic freedoms

100. The Law on Universities adopted in May 1998 by the Serbian Parliament directed that all university employees were obliged to sign new employment contracts by 5 August. Many refused to do so, protesting that the law was an attack on the autonomy of the university. Since then, new dismissal, suspension and transfer notes have been issued in Serbia to university employees, among whom are some of the FRY's most eminent academics of international distinction. However, these arbitrary measures have been directed mainly at the protest movement which is strongest among the Law, Philology and the Electrical Engineering faculties. The dean of the Electrical Engineering Faculty announced that he intended to punish faculty members who accept research grants from the U.S.-based Open Society Fund or "similar organizations". The freedom of movement within faculty premises has been restricted. Outside the entrance to the "research centre", a secretary has been stationed, with a telephone, and has been instructed to note staff absences. The dean hired private security personnel to prevent rebellious teachers from entering classrooms. Several teachers have been physically removed. To protest the ban on lecturing by certain professors, some students at those faculties are boycotting lectures and asking for the dismissal of deans.

101. During October and November, developments at the Faculty of Electrical Engineering led to street protests, hourly strikes every day and lecturing outside faculty buildings. Two students from the Faculty of Electrical Engineering and one from the Law Faculty were banned and at year's end were waiting for disciplinary procedures to take place. On 8 December, some 1,000 students of the three faculties took part in a protest march in the Belgrade city centre. The staff unions of the Faculty of Electrical Engineering launched a general strike appeal that was due to begin on 12 December and expressed their support to the student resistance movement "Otpor". The staff unions and other associations brought a constitutional challenge to the Law on

Universities; but after months, the only response from the Constitutional Court was notice that the court referred the challenge to the Serbian Government for comment.

H. Sandzak

102. In recent months, the situation in Sandzak has been largely overshadowed by events in Kosovo. In September 1998, the Special Rapporteur visited Novi Pazar, where he was briefed on the specific problems of the region by local human rights advocates. All interlocutors pointed to the social and economic consequences of the Kosovo crisis for the local communities, which have received large numbers of displaced persons from Kosovo. Ethnic tensions were also rising and there were concerns about a revival of anti-Islamic sentiments both locally and in the national Serbian and Yugoslav media. Government measures, such as the imposition of mandatory rule in Novi Pazar in July 1997, have further contributed to an atmosphere of mistrust and fear, which in turn has led a growing number of Sandzak Muslims to leave the region for Bosnia and Herzegovina and western Europe. The Special Rapporteur believes that an important step towards rebuilding confidence in Sandzak would be for the Serbian and Yugoslav authorities to investigate the atrocities that took place in the region during the war years 1992-1994. The abductions of mainly Muslim civilians in Strpci, Mioce, Bukovica, Sjeverin and other places in 1992 and 1993 have not been properly investigated and the families of the victims have received no compensation for the suffering and losses they endured. The Special Rapporteur notes that the war crimes trial of N. Ranisavljevic for violations related to abductions and killings in Strpci, which was originally scheduled to resume in September 1998, had still not been re-scheduled by the Bijelo Polje court at year's end.

I. Montenegro

103. In Montenegro, the Special Rapporteur met in September 1998 with the President of the Republic, the Prime Minister and other members of the Government. In Ulcinj and Rozaje, he was briefed by local officials about the situation of internally displaced persons and the economic and social consequences of the Kosovo crisis in these municipalities. Refugees and internally displaced persons made up 12 per cent of the total population of Montenegro. On 11 September, the Montenegrin government decided that it was no longer in a position to admit internally displaced persons from Kosovo. About 3,000 internally displaced persons were turned back at the border at Plav and directed across the Albanian border. In the immediate wake of this decision, government officials explained to the Special Rapporteur that resources were exhausted and a continued influx could pose a threat to the internal security of the Republic. The Special Rapporteur urges Montenegrin authorities to devise a solution to meet the educational needs of internally displaced schoolage children who, in some communities, outnumber the resident children and who, having attended "parallel" schools in Kosovo, cannot be easily integrated into the State educational system.

104. The Special Rapporteur notes that continuation of court proceedings in Danilovgrad on behalf of the Roma community, whose homes were destroyed in riots in April 1995, had not resumed, despite pledges from Montenegrin authorities that the proceedings would resume in summer 1998. He has also

received reports of ill-treatment of persons in police custody, denial of appropriate medical care to persons in police custody and, in particular, beatings at the time of arrest.

J. Refugees and the Internally-Displaced

105. Since the Special Rapporteur's mission, the latest refugees to the FRY have concentrated in Vojvodina and around Belgrade. They join the conservatively estimated 500,000 refugees from Croatia and Bosnia and Herzegovina already in the FRY. The number may well be higher, increased by the silent, steady flow of Serb refugees from Croatia during the past two years. Most refugees have found shelter in larger towns with relatives or friends; others are sheltered in collective centres throughout the country, including in Kosovo. Many have not been registered with authorities or have registered only those individual family members, usually children or the elderly, whom they deem to be in the most extreme need. Many have not applied to domestic or international humanitarian organizations, which have admitted to the Special Rapporteur and OHCHR that their stores are exhausted and their donors fatigued.

106. In addition, an estimated 175,000 persons remained internally displaced by the crisis in Kosovo at year's end. Some 75,000, meanwhile, had returned to their villages where they were living in very precarious conditions whether in their partially destroyed homes or with neighbours. It was, however, believed that none of these persons were living in the open anymore. The Special Rapporteur warns that the task of supporting over 700,000 persons in need - a significant portion of whom cannot return to their homes destroyed in fighting - cannot be sustained by the already-overtaxed aid structure in the FRY. They represent a far-reaching regional catastrophe in the making.

107. Concerning persons of declared or attributed Serb ethnicity, the Special Rapporteur notes that political documents, agreements with intergovernmental organizations, and administrative programmes issued in Croatia on citizenship documentation procedures and return have directly or indirectly focused on the situation of displaced persons inside Croatia. Little attention has been paid to the return of non-Croat refugees and, specifically, of refugees from Croatia now living in the FRY. The Special Rapporteur welcomed the April 1998 bilateral protocol to the Agreement on Normalization between Croatia and the FRY, which began to address the complexities of refugee return. He joins the international and domestic human rights advocates who have praised the bilateral Agreement on Legal Assistance in Civil and Criminal Matters. He notes, however, that by requiring that persons travel to their municipality to apply for return of property, as per the Croatian political document issued in June 1998, the "Programme for the Return and Accommodation of Expelled Persons, Refugees and Displaced Persons", effectively forecloses the participation of persons outside Croatia without travel documents.

108. The Special Rapporteur raises issues related to Croatian Government practices in this section because many thousands of persons wishing to return or travel to Croatia live in the FRY. Monitored every day by OHCHR staff, hundreds of persons begin before dawn to queue in front of the Croatian embassy in Belgrade, seeking travel documents, return applications, citizenship documents, and the registry documents required to prove

citizenship eligibility. Many come from "split" families in which some members have obtained Croatian citizenship documents, but others have been denied or after many months have received no answer to applications or appeals. Citizens of Croatia resident in the FRY, "split" families, and refugees who have yet to obtain their Croatian citizenship documents express the desire to visit relatives, arrange property transactions, check on the state of their holdings, or simply to travel to their home country. Appointments with consular officials requested in June 1998 were being scheduled for December. As part of the normalization process, the Yugoslav and Croatian Governments agreed to open two additional consulates in each country, and progress has been made toward that end. The Special Rapporteur stresses that the return of refugees and the acquisition of citizenship documents are served by governments opening consulates and offices, inside and outside their borders, where persons can apply for and receive all relevant documents. In all the countries of his mandate, he has observed a great need for such offices.

K. Conclusions and Recommendations

109. The Special Rapporteur observes that challenges facing the FRY are similar to those faced by the other countries of his mandate: to build a system based on rule of law instead of on a ruling party, to foster an independent judiciary, to implement in daily practice international standards and constitutional protections, to create functional units of self-government and local administration, to promote democracy and pluralism, to support freedom of broadcast and print media, to transform economic and social systems so as concurrently to create opportunity and protect the vulnerable, and to heal the wounds of war. At this writing, the FRY faces additional challenges, and the situation of human rights in the country is grave. Without addressing here the causes of the current crisis in Kosovo - to which a political solution is to be implemented - the Special Rapporteur emphasizes that threats to life and security of the person are the most serious violations of human rights. Every loss of life is a tragedy, regardless of the profession, ethnic identification, or other categorization of the victim. Every act of violence ultimately affects a society's ability to cope with the challenges described above.

110. The Special Rapporteur is unable to assess the effect of the Kosovo crisis abroad, particularly on the situation of asylum-seekers and refugees from the Republic of Albania and the territory of the former Socialist Federal Republic of Yugoslavia in the countries where they now reside. Accordingly, he suggests that the effect of those communities on the crisis in Kosovo, and the effect of the crisis on them, deserve attention.

111. Forensic investigations by an independent team of experts should be conducted at Likosane, Cirez, Prekaz, Glodjane, Golubovac, Gornje Obrinje, Volujak, Klecka, Orahovac and other locations to determine whether arbitrary, summary or extra-judicial executions occurred.

112. Should sufficient evidence exist to warrant criminal investigations as a result of investigation of police conduct, police officers should be subject not only to internal disciplinary measures, but to investigatory procedure

applicable to all citizens. Criminal charges, as necessary, should be brought by the State prosecutor, and cases should be brought swiftly to trial held in regular, open session.

113. Full and unhindered access by the ICTY to carry out its mandate throughout the FRY should be assured.

114. Human rights and rights under domestic law should be respected for those persons in detention. Persons arrested should be allowed immediately to contact their families, to inform them of their arrest, and to have access to legal aid. They should be allowed access on demand, regardless of whether they are in police detention or court custody, to their own physicians, not just to physicians provided by the police or court. All allegations of torture should be rigorously investigated, evidence found to have been obtained through torture should be disallowed, and perpetrators of torture should be prosecuted and punished.

115. Police should strive to treat maximum periods after arrest specified by domestic law as maximum limits. Domestic law allows the police to hold an individual 24 hours to determine identity and 72 hours before arraignment before an investigative judge. Reports indicate that these maximum limits are frequently the norm - not the exception - for preliminary police custody.

116. Kosovo paramilitary units should immediately release all abductees, without preconditions.

117. The parliament of Serbia should repeal the Law on Public Information.

118. The Governments of Bosnia and Herzegovina, Croatia, and FRY should implement a harmonized regional citizenship regime, including appropriate provision for dual/multiple citizenship, to resolve the problem of citizenship, avoid de facto statelessness, and promote return of refugees.

119. Regional approaches to property rights, creating uniform regulations on protection of property and property transactions, should be established.